

## REMARKS

Receipt of the Office Action of May 23, 2007 is gratefully acknowledged.

Claims 8-26 have been further examined along with new claims 27-29 with the result that claims 8-29 have been rejected under 35 USC 103(a) over Shimura in view of Budike, Jr. and Mullkey et al.

The Examiner's rejection in response to arguments made in the previous response have been carefully considered as have the references applied in the noted rejection. In view of this consideration, the noted rejection is respectfully traversed.

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The inventive method provides measured values to end customers. The measured values are obtained by sensors. The sensors measure the particular value and transmit this particular value (measured value) to a control system. The number of the transmissions is recorded and costs associated with the number of transmissions is calculated for the end customer. This method addresses and solves the problem which has arisen in the art whereby end customers have found themselves paying for sensors regardless of how extensively the sensors were used to provide measured values. By calculating the number of transmissions the end customer is responsible only for the usage.

Why is the method of the present invention different from the references cited by the examiner? Certainly one of the differences is that these references do not address the problem noted above and accordingly do not provide a solution to the problem noted above.


Considering each specifically, and then in combination, Shimura does not consider "the costs for the end customer on the basis of the number of the transmission operations" as noted by the examiner in enumerated paragraph 14 on page 5 of the Office Action. Instead, the Examiner suggests that Budike, Jr. discloses "calculating the costs for the end customer" in column 7 beginning with line 25 to column 8, line 55. This passage referred to by the Examiner does mention the use of sensors to "obtain utility meter activity", which sensors "may be connected to the central processing unit".

Regarding the associated program, this passage states in column 8, "the program reduces consumption without shutting down vital equipment by identifying and warning of individual utility consuming equipment and consumption rate changes, by anticipating peak loads, and by anticipating demand spikes and sags, and then initiating a second control protocol and algorithm to the appropriate control system to automatically correct or eliminate inefficient energy consumption." What does this program have to do with the present invention of this application? In fact, very little. Does it teach, counting the number of transmission operations? Perhaps, but it is not clear, and one cannot justify a combination of teachings when the teaching of at least one reference in the combination is not clear. On this point the examiner states on page 5 of the Office Action that "... official notice is taken that counting the number of operations as old, well known and necessary and anything having to do with monitoring and accounting as occurs in both Budike and Schimura." From an evidentiary point of view, such a position is unwarranted. See, **Brand v. Miller**, 82 USPQ2d 1705 (CAFC 2007). While this decision refers to the Board of Patent Appeals and Interferences, it should just as easily be applied to patent examination. The record in this prosecution must include evidence sufficient to make a prima facie case and not be based on what the examiner perceives as a possible reality. The fact that "counting" may be old does not mean that counting the number of transmission operations in the context of the claimed invention is either old or obvious.

Mulokey et al does not change this conclusion. Counting clock bits does not, it is respectfully submitted, amount to calculating the number of transmission operations and calculating the costs to the end customer.

The prima facie case has not been made so that claims 8 - 29 should be allowed. If claims 8 - 29 are not allowed, the examiner is urged to supplement the record and re-open prosecution or supplement the record with additional evidence so that the appeal can be filed.

Respectfully submitted,

  
Felix J. D'Amrosio  
Reg. No. 25,721

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BACON & THOMAS, PLLC  
625 Slaters lane - 4<sup>th</sup> Floor  
Alexandria, VA 22314